



Attorney General of New Mexico

GARY K. KING
Attorney General

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Chief Deputy Attorney General

November 5, 2008

Rigo Chavez, Director
APS Custodian of Records
Albuquerque Public Schools
6400 Uptown Blvd. NE, Suite 100E
Albuquerque, NM 87110-4204

Re: Inspection of Public Records Act Complaint-Silvio Dell'Angela

Dear Director Chavez:

Thank you for responding to our request for information regarding a complaint from Silvio Dell'Angela alleging that the Albuquerque Public Schools ("APS") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 through 14-2-12. We have reviewed Mr. Dell'Angela's February 21, 2008 complaint, your response of June 10, 2008, and the IPRA. Based on our review, we conclude that APS violated the IPRA by responding in an untimely manner to Mr. Dell'Angela's first request which is discussed in more detail below.

Mr. Dell'Angela's complaint raised seven issues, which we will address in the order that he raised them. First, Mr. Dell'Angela alleges that APS was unresponsive to his January 13, 2008 request for information regarding maintenance and operation costs for the portables at Georgia O' Keeffe Elementary School ("GO'K") from 2005 to the present. You responded that you wrote Mr. Dell'Angela on February 14, 2008 telling him that you would research these costs and get back to him. You called Mr. Dell'Angela on February 28, 2008 and told him that you had compiled the information and would leave it at the front desk for his inspection.

The IPRA provides that a "custodian receiving a written request shall permit the inspection immediately or as soon as practicable under the circumstances, but not later than fifteen days after receiving the request." NMSA 1978, Section 14-2-8(D). According to your response, you responded thirty-two days after Mr. Dell'Angela's January 13, 2008 request, on February 14, 2008. It appears that Mr. Dell'Angela sent the request to Linda Sink, the acting superintendent, but the file shows that she forwarded this to you four days later. Even taking those four days into account, your response was

twenty-eight days after the request. Because there was not a timely response, we find that APS violated IPRA.

Second, regarding the request for the costs of portables under APS's compromise construction approach, you stated that you provided what costs were available at that time, based on portable costs from two other schools, and that you provided the records on February 1, 2008. Mr. Dell'Angela stated that he was left to interpret how these other schools costs related to "GO'K" costs, but that is not an issue we can analyze under the IPRA. Therefore, we find no violation of the IPRA with regard to this request.

Third, regarding information on how the \$1,190,000 estimate was developed for the new west city park under the Option 1 approach, you responded that you provided the information on or about February 1, 2008. You stated you provided the available information including a spreadsheet from the APS Capital Master Plan Office. In reviewing Mr. Dell'Angela's comments, he seemed dissatisfied because the information did not disclose how the initial estimate went from \$500,000 to \$1,000,000 to eventually end at \$1,190,000. Again, this is not an issue that we can analyze under the IPRA, and therefore we find no violation.

Fourth, regarding the basis for the \$80,000 estimate for reconstruction of west city park under the compromise option along with comparable estimates, you responded that you provided what information was available from the APS Master Plan Office on February 1, 2008. You also stated that APS did not have any comparable estimates so there were none to provide to Mr. Dell'Angela. Mr. Dell'Angela stated that with the information he was provided, there was no way to determine how the estimate started at \$80,000 and shortly thereafter was quoted at \$424,647.26. He further alleges that the APS staff deliberately underestimated these costs to deceive the public. This does not raise an IPRA issue, and we find no violation.

The fifth issue involved for the estimate of \$2,000,000 for portables for another APS site under Option 3 as compared to the city's west park cost of \$1,100,000. You responded that these records were provided by the APS Master Plan Office on February 1, 2008. Again Mr. Dell'Angela stated that he suspected that APS deceptively under-estimated this figure. This does not raise as IPRA issue and we find no violation.

Sixth, Mr. Dell'Angela amended his IPRA request to APS on January 14, 2008, requesting a list of all signatures gathered by "Save the West Park." You responded that you provided the signature sheets on February 1, 2008, and Mr. Dell'Angela's e-mail of February 3, 2008 to you seems to confirm this disclosure. We find no IPRA violation in the January 14, 2008 amended request.

Seventh, Mr. Dell'Angela amended his IPRA request to APS a second time on January 16, 2008 requesting audio and printed records for all of the APS presentations and comments on this issue that were made in October, November and December of 2007. You responded that all of the available information was made available on February 20, 2008. After our telephone conversation of June 25, 2008 it was determined the February

20th date was a typographical error, and should have read February 1, 2008. Mr. Dell'Angela in his February 3, 2008 e-mail acknowledged he received the information on February 1, 2008. Mr. Dell'Angela's complaint stated his major concern was in getting material that he felt was incomplete and a duplicate of material he already had in his possession. This is not an issue that can be analyzed under IPRA, and therefore we find no violation.

Based on the information available to us, the APS failed to respond to the first item of the original request of January 13, 2008 in a timely manner. Because the APS has now complied with the inspection request, no further action by this office appears warranted at this time. We will, however, maintain a copy of this complaint in our files in case further violations are alleged and proven in the future. If you have questions regarding the issues addressed in this letter, or about the IPRA in general, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Lesley J. Lowe". The signature is written in dark ink and is positioned above the printed name and title.

Lesley J. Lowe
Assistant Attorney General

Cc: Silvio Dell'Angela, Albuquerque; Albert J. Lama, Chief Deputy Attorney General